

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

MDL No. 2419

THIS DOCUMENT RELATES TO:

All cases concerning Specialty Surgery Center, )  
Kenneth R. Lister, M.D., and Kenneth Lister, )  
M.D., P.C. )

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR ACCESS  
TO THE RUST/OMNI REPOSITORY**

Specialty Surgery Center, Crossville, PLLC (“SSC”), Kenneth R. Lister, M.D. (“Dr. Lister”), and Kenneth Lister, M.D., P.C. (“Dr. Lister’s Practice”) (collectively “the Defendants”), by and through counsel, file this Memorandum in Support of their Motion for Access to the Rust/Omni repository.

## BACKGROUND/ARGUMENT

On June 21, 2013, this Court entered a Qualified Protective Order creating a repository for documents, data, or other information containing the plaintiffs' health information produced pursuant to subpoenas and the Court's Order. [Dkt. No. 192]. All of the protected health information produced pursuant to the order was to be produced in electronic or hard copy format to a third party vendor to be selected jointly by the Plaintiffs' Steering Committee ("PSC"), the chapter 11 trustee appointed in NECC's chapter 11 case, and the Official Committee of Unsecured Creditors appointed in NECC's chapter 11 case. [Dkt. No. 192, ¶ 3]. It is the Defendants' understanding those entities chose Rust/Omni as the third party vendor.

The Defendants now seek access to that repository as it may contain documents which relate to the Defendants and/or the individual plaintiffs who have alleged a cause of action against them in this litigation. Authority for such access is found in this Court's June 21, 2013 Order wherein this Court expressly provided "[i]n the event Defendants wish to use documents, data or other information produced pursuant to the subpoenas and this Order, they may seek permission of the Court to do so." [Dkt. No. 192, ¶ 6]. The Defendants are seeking only those documents related to cases involving plaintiffs who have sued the Defendants. Accordingly, the Defendants request the Court enter an order which grants them access to the documents contained in the Rust/Omni repository which relate to the following cases:

<b>Suit Style</b>	<b>U.S.D.C. - Middle District of Tennessee Docket No.</b>
Elizabeth Bray v. Unifirst Corporation, A/D/B/A/ Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, and Kenneth R. Lister	1:13-cv-12596-FDS
Peggy B. Bumgarner and Roger D. Bumgarner v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, Kenneth Lister, M.D., P.C., and Kenneth R. Lister, M.D.	1:13-cv-12679-FDS
Wilma S. Carter v. Ameridose, LLC, Medical Sales Management, Inc., Medical Sales Management SW, Inc., GDC Properties Management, LLC, ARL Bio Pharma, Inc., D/B/A Analytical Research laboratories, Barry J. Cadden, Gregory Conigliaro, Lisa Conigliaro Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn A. Chin, Specialty Surgery Center, PLLC and Kenneth R. Lister, M.D.	2:13-cv-00129-FDS
Wilma S. Carter and Lawrence Carter v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC and Kenneth R. Lister, M.D.	1:13-cv-12187-RWZ
Judy Collins v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, and Kenneth R. Lister	1:13-cv-12580-FDS
Wanda J. Cox and Perry Cox v. Ameridose, LLC,	1:13-cv-12918-FDS

Medical Sales Management, Inc., Medical Sales Management SW, Inc., GDC Properties Management, LLC, ARL Bio Pharma, Inc., D/B/A Analytical Research laboratories, Barry J. Cadden, Gregory Conigliaro, Lisa Conigliaro Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn A. Chin, Specialty Surgery Center, PLLC and Kenneth R. Lister, M.D.	
Wanda Dingess v. Ameridose, LLC, Medical Sales Management, Inc., Medical Sales Management SW, Inc., GDC Properties Management, LLC, ARL Bio Pharma, Inc., D/B/A Analytical Research laboratories, Barry J. Cadden, Gregory Conigliaro, Lisa Conigliaro Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn A. Chin, Specialty Surgery Center, PLLC and Kenneth R. Lister, M.D.	1:13-cv-12490-FDS
Bobby A. Foster and Delores Kivett Foster v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services and Specialty Surgery Center, PLLC	1:13-cv-12686-FDS
Dorothy A. Fuelling and Richard E Fuelling v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, Kenneth Lister M.D., P.C., and Kenneth R. Lister, M.D.	1:13-cv-12741-FDS
Craig E Weaver, Son of the Deceased and Administrator Ad Litem of Estate of Patricia A. Gambaccini v. Unifirst Corporation A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, Kenneth Lister M.D. P.C., and Kenneth R. Lister M.D.	1:13-cv-12681-FDS
Danette Graham v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, and Kenneth R. Lister, M.D.	1:13-cv-12581-FDS
Georgianne Hubbard v. Unifirst Corporation D/B/A Uniclean Cleanroom Services and Specialty Surgery Center, PLLC D/B/A Specialty Surgery Center	1:13-cv-12922-FDS
Linda Jackson v. Unifirst Corporation, D/B/A Uniclean Cleanroom Services, and Specialty Surgery Center, PLLC D/B/A Specialty Surgery Center	1:13-cv-12923-FDS
John Johnson v. Unifirst Corporation A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC	2:13-cv-0099
Edna Keyes v. NECC d/b/a new England Compounding Center, Barry J. Cadden, Lisa M.	2:13-cv-00109

Cadden, Gregory Conigliaro, Carla Conigliaro, Douglas Conigliaro, Glenn A. Chinn, Ameridose, LLC, Medical Sales Managements, Inc., Medical Sales Management SW, Inc., GDC Properties Management, LLC, ARL Biopharma, Inc., Specialty Surgery Center, PLLC, Cookeville Regional Medical Center Auxiliary Lifeline, Cookeville Regional Medical Group, Inc.	
William Lapiska v. Unifirst Corporation, D/B/A Uniclean Cleanroom Services, and Specialty Surgery Center, PLLC d/b/a Specialty Surgery Center	1:13-cv-12914-FDS
Sherry A. McDavid, individually and next of kin of David F. McDavid, deceased	1:13-cv-12742-FDS
Darwin L. Nealon, as son, next of kin to and as the Administrator of the Estate of Dallas Ray Nealon, deceased v. Ameridose, LLC, Medical Sales Management, Inc., Medical Sales Management SW, Inc., GDC Properties Management, LLC, ARL Bio Pharma, Inc., D/B/A Analytical Research laboratories, Barry J. Cadden, Gregory Conigliaro, Lisa Conigliaro Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn A. Chin, Specialty Surgery Center, PLLC and Unifirst Corporation A/D/B/A Uniclean Cleanroom Services	1:13-cv-12491-FDS
Jocelyn Kae Norris v. Unifirst Corporation, D/B/A Uniclean Cleanroom Services, and Specialty Surgery Center, PLLC, D/B/A Specialty Surgery Center	1:13-cv-12682-FDS
James Palmer and wife, Michelle Palmer v. Unifirst Corporation, D/B/A Uniclean Cleanroom Services and Specialty Surgery Center	1:13-cv-12688-FDS
Wanda L. Reed and J.E. Reed v. Ameridose, LLC, Medical Sales Management, Inc., Medical Sales Management SW, Inc., GDC Properties Management, LLC, ARL Bio Pharma, Inc., D/B/A Analytical Research laboratories, Barry J. Cadden, Gregory Conigliaro, Lisa Conigliaro Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn A. Chin, Specialty Surgery Center, LLC and Unifirst Corporation a/d/b/a Uniclean Cleanroom Services.	1:13-cv-12917-FDS
Janice K. Rhind and Christopher G. Rhind v. Unifirst Corporation A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, Kenneth Lister M.D., P.C., and Kenneth R. Lister,	1:13-cv-12740-FDS

M.D.	
Shirley Savercool and Donald Savercool v. Unifirst Corporation A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, and Kenneth R. Lister	1:13-cv-12583-FDS
Paula K. Smith and Jim F. Smith v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services, Specialty Center, PLLC, Kenneth Lister, M.D., P.C. and Kenneth R. Lister, M.D.	1:13-cv-12684-FDS
Dale Willis v. Unifirst Corporation, A/D/B/A Uniclean Cleanroom Services, Specialty Surgery Center, PLLC, and Kenneth R. Lister	1:13-cv-12597-FDS

### **CONCLUSION**

For the reasons stated herein, the Defendants respectfully request that this Court enter an order granting the Defendants access to the documents contained in the Rust/Omni repository which relate to the cases listed above.

Respectfully submitted,

/s/ Kent E. Krause  
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**CERTIFICATE OF CONFERENCE**

To the extent this is considered a discovery related motion, I hereby certify that counsel for the defendants met and conferred with counsel for the plaintiffs in a good-faith effort to resolve gaining access to these documents. The parties all agreed that given the prior Order of this Court, it is necessary to move the Court in order to gain access to these documents.

/s/ Kent E. Krause

**KENT E. KRAUSE**

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing and copies will be served via electronic mail or regular US mail to those participants identified as unregistered this the 3rd day of December, 2015.

/s/ Kent E. Krause

**KENT E. KRAUSE**

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\*Admitted pursuant to MDL Order No. 1

\*\*Admitted *pro hac vice*